
OPINION OF THE PUBLIC ACCESS COUNSELOR

KIMBERLY LIVORNO,
Complainant,

v.

FRANKLIN COMMUNITY SCHOOL BOARD,
Respondent.

Formal Complaint No.
21-FC-95

Luke H. Britt
Public Access Counselor

This advisory opinion is in response to a formal complaint alleging the Board of Trustees for Franklin Community Schools violated the Open Door Law.¹ Superintendent Dr. David Clendening filed an answer on behalf of FCS. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on July 7, 2021.

¹ Ind. Code § 5-14-1.5-1-8.

BACKGROUND

In this case we consider whether a school board inappropriately held a secret meeting during a recess of a board meeting.

On June 14, 2021, the Franklin Community Schools Board of Trustees (Board) held a regularly scheduled meeting.

Pursuant to Executive Order 21-09 (extended by Executive Order 21-14), a mask mandate was in effect for K-12 educational facilities. Several attendees showed up at the meeting and refused to wear masks for their safety and those around them. After commencing the meeting, the Board President explained the requirement. After some agitation by the unmasked attendees, at a certain point in the meeting, the proceedings turned heated. At this time the meeting was recessed.

Kimberly Livorno (Complainant) contends that the FCS Board held an improper private meeting away from the public during the recess. After this offline gathering, the meeting was gaveled back in and adjourned without any other official action. This was due to the unmasked contingent refusing to comply with the established safety rules.

Moreover, Livorno was subsequently denied meeting minutes with FCS saying the meeting never officially took place.

On July 7, 2021, Livorno filed a formal complaint with this office.

Six days later, FCS filed an answer to Livorno's complaint denying the Board violated the Open Door Law. FCS does not dispute that the Board recessed the meeting. At the same time, FCS argues that contrary to the allegations in the complaint, the Board never convened an improper executive session because a majority Board never gathered except during the public meeting. Instead, FCS contends that the superintendent, two Board members, the board's attorney, and the school resource officer had an offline discussion.

Video evidence demonstrates that three school board members stayed in the meeting room making it impossible for the other two members to conduct an offline meeting. The reasoning for this conclusion will be discussed below.

ANALYSIS

1. The Open Door Law

The Open Door Law (ODL) requires public agencies to conduct and take official action openly, unless otherwise expressly provided by statute, so the people may be fully informed. Ind. Code § 5-14-1.5-1. As a result, the ODL requires all meetings of the governing bodies of public agencies to be open at all times to allow members of the public to observe and record the proceedings. *See* Ind. Code § 5-14-1.5-3(a).

Franklin Community Schools (FCS) is a public agency for purposes of the ODL; and thus, is subject to the law's requirements. Ind. Code § 5-14-1.5-2. Moreover, the FCS Board of Trustees (Board) is a governing body for purposes of the ODL. *See* Ind. Code § 5-14-1.5-2(b).

As a result, unless an exception applies, all meetings of the school board must be open at all times to allow members of the public to observe and record.

1.1 ODL definitions

Under the ODL, “meeting” means “a gathering of a majority of the governing body of a public agency for the purpose of taking official action upon public business.” Ind. Code § 5-14-1.5-2(c).

“Official action” means to: (1) receive information; (2) deliberate; (3) make recommendations; (4) establish policy; (5) make decisions; or (6) take final action. Ind. Code § 5-14-1.5-2(d). Notably, the ODL defines “final action” as “a vote by the governing body on any motion, proposal, resolution, rule, regulation, ordinance or order.” Ind. Code § 5-14-1.5-2(g). The ODL also mandates a governing body to take all final action at public meeting. *See* Ind. Code § 5-14-1.5-6.1(c). Additionally, “public business” means “any function upon which the public agency is empowered or authorized to take official action.” Ind. Code § 5-14-1.5-2(e).

2. Livorno’s claims

Livorno contends the FCS Board violated the Open Door Law by holding a meeting-within-a-meeting to discuss public business during a recess.

All things being equal, a meeting cannot be triggered by anything less than a majority of a five-member governing body. Therefore, three school board members are necessary to trigger Open Door Law provisions.

Since the FCS Board was simply following the state's mask mandate for K-12 educational facilities, it was well within its discretion to pause the meeting to deal with those who refused to follow the rules.

Keeping with the established Executive Order, the superintendent, two members of the Board, the Board's attorney, and a school resource officer conferred and concluded that the meeting should be cancelled rather than expelling those who were unwilling to comply. This offline discussion was not a meeting because it did not involve a majority of the FCS Board. A critical element of an Open Door Law regulated meeting is the presence of a numerical majority of a governing body.

Unfortunately, those noncompliant attendees made it so that public business could not be safely conducted. Therefore, the Board president made the decision to shut down the meeting until a later date.

Presently, there is no mandate for K-12 educational facilities. School boards have the discretion whether to implement them. If they choose to do so for public meetings, this office does not take exception and does not consider mask requirements a barrier to access.

CONCLUSION

Based on the foregoing, it is the opinion of this office that the Board of Trustees for Franklin Community Schools did not violate the Open Door Law.

A handwritten signature in black ink, appearing to read 'LH Britt', is positioned to the right of the conclusion text.

Luke H. Britt
Public Access Counselor